

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS

Plaintiff

and

**THE ATTORNEY GENERAL OF CANADA and HER MAJESTY THE QUEEN IN
RIGHT OF ONTARIO**

Defendants

- and -

**THE HAUDENOSAUNEE DEVELOPMENT INSTITUTE (AARON DETLOR AND
BRIAN DOOLITTLE), AS APPOINTED BY THE HAUDENOSAUNEE
CONFEDERACY CHIEFS COUNCIL, ON BEHALF OF THE HAUDENOSAUNEE
CONFEDERACY**

Moving Party

**FACTUM OF THE MOVING PARTY (MEN’S FIRE OF THE SIX NATIONS GRAND
RIVER TERRITORY)**

PART I – OVERVIEW

1. On June 10, 2023 the Moving Party (“**HDI**”) submitted a Notice of Motion for an Order joining HDI as a party in this proceeding, or, alternatively, granting HDI leave to intervene as an added party in this proceeding pursuant to rules 5.03 and 13.01 of the *Rules of Civil Procedure*. HDI also seeks an Order appointing HDI to “represent all citizens of the Haudenosaunee Confederacy... or, alternatively, an Order authorizing HDI to join the proceeding on behalf of all

citizens of the Haudenosaunee Confederacy”¹, pursuant to rules 10.01(1) and 12.08 of the *Rules of Civil Procedure*.

2. As the grounds for this intervention, HDI claims that the adjudication of traditional Aboriginal and treaty rights requires the involvement of “the collective holders of those rights.”² HDI’s Notice of Motion states that the involvement of the Haudenosaunee Confederacy, the “true collective rights-holders”³ of the treaties at issue in the action, is what will be accomplished through the addition of HDI as a party to the proceeding. **HDI states that it was chosen “in accordance with traditional Haudenosaunee Law” by the governing body of the Haudenosaunee as a representative to advance the interests of the Haudenosaunee Confederacy and its citizens in this litigation.”**⁴

3. Upon being made aware of HDI’s motion to intervene in this proceeding, following the broad notice to the communities, the Men’s Fire convened and resolved to intervene in this proceeding as a friend of the court.

4. The Men’s Fire submitted a Notice of Motion on November 7, 2022, which was amended on February 6, 2023, objecting to HDI’s request to be added as a party to this proceeding and contesting HDI’s position as an authorized representative of the Haudenosaunee Confederacy and its people under Haudenosaunee Law.⁵

¹ HDI Notice of Motion at para. 1(b), pp. 2.

² HDI Notice of Motion at para. 6, pp. 2.

³ HDI Notice of Motion at para. 6, pp. 2.

⁴ HDI Notice of Motion at para. 7, pp. 3.

⁵ Men’s Fire Amended Notice of Motion at para. 2, pp. 3.

5. The Men's Fire's basis for intervening in this proceeding stems from their responsibilities as Haudenosaunee people, under the Gayanashagowa, the Great Law of Peace, to identify and seek to correct the irregular and improper performance of the Great Peace and its laws.⁶ Secretary of the Men's Fire, Wilfred Davey, clarified this responsibility in his Cross-examination.⁷

6. The Men's Fire Amended Notice of Motion seeks an Order:⁸

- a. Granting leave to the Men's Fire to intervene as an added party in this proceeding on HDI's pending motion, pursuant to rule 13.01 of the Rules of Civil Procedure;
- b. Granting leave to the Men's Fire to intervene as a friend of the court in this proceeding, pursuant to rule 13.02 of the Rules of Civil Procedure;
- c. Granting an invitation of the presiding judge to the Men's Fire to intervene as a friend of the court in this proceeding, pursuant to rule 13.02 of the Rules of Civil Procedure;

7. The Men's Fire seeks to act as a friend of the court in this proceeding in order that it may assist in demonstrating to the court the insufficiency of HDI's claim to authority under Haudenosaunee Law, as well as HDI's lack of openness, accountability, and transparency in regard to Haudenosaunee Communities.

⁶ Men's Fire Amended Notice of Motion at para. 8, pp. 5.

⁷ Transcript of the Cross-examination of Wilfred Davey held on March 13, 2023 ("**Davey Transcript**") at pp. 59, qq. 208-211.

⁸ Men's Fire Amended Notice of Motion at para 1(a) - 1(c), pp. 3.

PART II – SUMMARY OF FACTS AND ARGUMENTS

A. THE MEN’S FIRE

8. The Men’s Fire of the Grand River Territory (Hodiskeagehda), is a collective of Haudenosaunee persons across Turtle Island who are entitled by their inherited rights and responsibilities under Haudenosaunee Law, the circle wampum, to intervene in this proceeding as an added party to the motion and a friend of the court.⁹

9. It is the inherited right and responsibility of the Men’s Fire under Haudenosaunee Law to meet and discuss collectively issues and matters of concern to the communities of the Haudenosaunee Confederacy.¹⁰ The Men’s Fire is empowered by the wampums of the Great Law, which intertwine and assign responsibility to the men to reach out and talk to the members of Haudenosaunee communities who don’t have a voice in Council.¹¹

10. The men of the Men’s Fire consult their communities and the Clan Mothers in their territories, and then come together to exchange ideas and collectively decide on the best course of action.¹² The Men’s Fire are also instructed by the women in their communities, who collectively discuss the issues at hand and provide the men with instructions on how to handle and proceed on said issues.¹³ The proceedings of the Men’s Fire are guided by the wampums which have been passed down through generations of Haudenosaunee and given to them by Deganawida, the Peacemaker.¹⁴ The Men’s Fire decision making process is based on collective decision making and consensus in accordance with Haudenosaunee Law. Issues are brought to the table and deliberated by “both sides of the fire, with the Mohawk and the Seneca.” Then passed over the fire to the Oneida and Cayuga. Following this process, the Men’s Fire informs the community of what

⁹ Davey Transcript at pp. 12, qq. 35.

¹⁰ Davey Transcript at pp. 78, qq. 261.

¹¹ Davey Transcript at pp. 59-60, qq. 211.

¹² Davey Transcript at pp. 72, qq. 246.

¹³ Davey Transcript at pp. 74, qq. 252.

¹⁴ Davey Transcript at pp. 73, qq. 250.

has been decided on.¹⁵

11. In the affidavit of HDI's expert, Richard Wayne Hill Sr, affirmed February 6, 2023, he states that "The 'Men's Fire' as described in the Delaronde Affidavit is not a political unit in Haudenosaunee Law. The true recitation of the Great Law according to the sacred wampum belts made by Chiefs over 1,000 years ago makes no mention of a 'Men's Fire'."¹⁶ This position is contradicted by the evidence of the Men's Fire affiants, Wilfred Davey and Paul Delaronde (Tekarontake), on the responsibilities of the Men's Fire and wampum #94 which states that "The men of every Clan of the Five Nations shall have a Council Fire ever burning..."¹⁷ Furthermore, neither Mr. Davey or Mr. Delaronde were cross examined on this point.

12. The Men's Fire, as Haudenosaunee persons and members of the community with inherited rights and responsibilities, seek to be added as a party to the motion on the basis that they have a vested interest in the issues raised in this proceeding and a responsibility to speak for those who cannot raise their voices in this matter.

13. It is the responsibility of the Men's Fire to voice the concerns of Haudenosaunee men, women, and Clan Mothers across Turtle Island. The Men's Fire were instructed by Haudenosaunee persons in the community to uphold their responsibilities and intervene in this proceeding as an added party to the motion.¹⁸ As Haudenosaunee persons, the men of the Men's Fire and the communities and territories from which they originate and speak for, have a vested interest in this litigation as it pertains to the people of the Haudenosaunee Confederacy.

14. The intervention motion brought by HDI which seeks to obstruct this proceeding has been vocally opposed in various Haudenosaunee communities leading the Men's Fire to proceed on the

¹⁵ Davey Transcript at pp. 75, qq. 253.

¹⁶ Affidavit of Richard Wayne Hill Sr., affirmed February 6, 2023 ("**Hill Affidavit**") at para. 41, Responding Motion Record pp. 54.

¹⁷ Affidavit of Liam Gerry, affirmed February 24, 2023 ("**Gerry Affidavit**"), at Exhibit "B", Supplemental Responding Motion Record pp. 136.

¹⁸ Davey Transcript at pp. 59, qq. 208.

basis of collective decision making and instruction to bring their own motion to act as a person and added party to this motion. These concerns have been voiced openly in forums such as the Two Row Times News¹⁹ as well as in objection letters such as that produced by the Men's Council of Oneida of the Thames.²⁰

15. The Men's Fire seeks to intervene in this proceeding as a friend of the court in order that it may be of use to the court in contributing to the resolution of this motion. The Men's Fire seeks to aid the court in resolving this motion by providing the court with the unheard voices of the community and its members, both men, women, and Clan Mothers across Turtle Island, as well as expertise in the laws and traditions of the Haudenosaunee Confederacy which have been passed down for generations to the men of the Men's Fire.

16. The contribution to the resolution of this motion which the Men's Fire seeks to bring as a friend of the court is useful and distinct insofar as the Men's Fire has raised the issues of authority, accountability, and transparency with respect to HDI. HDI claims in its motion to represent all citizens of the Haudenosaunee Confederacy²¹ and seeks to be appointed by the court as their representative. The Men's Fire disputes the notion that HDI represents all citizens of the Haudenosaunee Confederacy and seeks to demonstrate through raising the issues of HDI's authority, accountability, and transparency that HDI as a proposed representative of the Haudenosaunee would not fairly represent its members and, furthermore, has interests in conflict with the interests of the Haudenosaunee people.

B. HDI'S LACK OF AUTHORITY UNDER HAUDENOSAUNEE LAW TO REPRESENT ALL CITIZENS OF THE HAUDENOSAUNEE CONFEDERACY

I. Haudenosaunee Law

¹⁹ Gerry Affidavit at Exhibit "D", Supplemental Responding Motion Record pp. 169.

²⁰ Affidavit of Wilfred Davey, affirmed January 6, 2023 ("**Davey Affidavit**"), at Exhibit "E", Amended Responding Motion Record pp. 68.

²¹ HDI Notice of Motion at para. 7, pp. 3.

17. The substance of the Men's Fire's objection to HDI's intervention motion pertains to the irregular and improper carrying out and performance of the functions of the Great Peace and its laws by HDI. The Men's Fire is empowered by Haudenosaunee Law to intervene where the performance of the Haudenosaunee laws laid out in the Gayanashagowa is improper and irregular.²²

18. The understanding of the Great Peace, its functions and its laws, which the Men's Fire sets forth in this intervention stems from the oral history and tradition of the Haudenosaunee people which has been passed down for generations to the current members of the community who make up the Men's Fire and the expert brought in by the Men's Fire, Paul Delaronde . Mr. Delaronde has previously testified in Ontario Courts, such as in the matter of R. v. Green and Monture where he was certified by the court as an expert, as well as in New York State Supreme Court.²³

19. Mr. Delaronde, throughout his life, has remained enmeshed in the community and has been thoroughly immersed in the ways and traditions of the Haudenosaunee people. Mr. Delaronde has received the oral tradition from his elders and participated in keeping that tradition alive through recitations in which the words, principles, and philosophies which were embedded into the wampums of the Great Law are expressed orally.²⁴ Mr. Delaronde is also familiar with the written versions of the Great Law in English and Mohawk languages, which the Men's Fire have referenced to provide clarity to the court on the improper and irregular process of HDI which fails to accord with the Great Law. Though he identifies the oral tradition as the most accurate and faithful rendition of the Great Law, Mr. Delaronde states that the written versions can function as an introduction for "somebody who doesn't know our ways."²⁵

²² Affidavit of Paul Delaronde, affirmed January 6, 2023 ("**Delaronde Affidavit**") at para. 24-25, Amended Responding Motion Record pp. 75.

²³ Transcript of the Cross-examination of Paul Delaronde held on March 20, 2023 ("**Delaronde Transcript**") at pp. 6-7, qq. 3.

²⁴ Delaronde Transcript at pp. 33, qq. 62.

²⁵ Delaronde Transcript at pp. 36, qq. 72.

20. Mr. Delaronde's expertise with respect to Haudenosaunee Law which he set forth in his affidavit was challenged by Richard Wayne Hill Sr. in his affidavit affirmed February 6, 2023 contained in the Responding Motion Record of the HDI. Mr. Hill's affidavit sought to refute Mr. Delaronde's view of the Great Law and impeach his credibility as an expert by raising issues and claims pertaining to:

- a. Allegations regarding Mr. Delaronde's past involvement with "the Warrior Society";²⁶
- b. The origin of the written version of the Great Law which Delaronde cites;²⁷
- c. Allegations that Mr. Delaronde is a director of several non-Haudenosaunee corporations;²⁸

21. These contentions set forth in Mr. Hill's affidavit were included with the intention of impeaching Mr. Delaronde's credibility as an expert and contesting his view of the Great Law. However, the principle set forth in **Browne v. Dunn** (1893) 6. 67, H.L. entails that a cross examiner cannot rely on evidence which is contradictory to the testimony of the opposing witness without first affording the opposing witness the opportunity to respond to it. Mr. Delaronde was not examined on his alleged past with the "Warrior society", nor was he examined on the issues of the origins of the written versions of the Great Law. Mr. Delaronde was also not examined on the issue of his alleged involvement with several non-Haudenosaunee corporations. Mr. Delaronde could have answered each of these accusations if they were put to him in cross examination.

22. HDI further attempts to denigrate Mr. Bill Monture of the Men's Fire by alleging in the affidavit of Aaron Detlor, affirmed February 6, 2023, by referring to the assault trial involving Mr. Detlor and Mr. Monture and Mr. Green which took place in 2018. In cross examination, Mr. Detlor

²⁶ Hill Affidavit at para. 12, Responding Motion Record pp. 45.

²⁷ Hill Affidavit at para. 15, Responding Motion Record pp. 47.

²⁸ Hill Affidavit at para 77, Responding Motion Record pp. 63.

admitted to the trial resulting in an absolute discharge. In the sentencing decision the court referred to the community issues in which these matters should be addressed and did not want to silence Mr. Monture, although assault was not the appropriate method of resolution.²⁹

23. Additionally, Mr. Hill set out his own alternative view of the Great Law in his June 10, 2022 affidavit which was then elaborated on in his February 6, 2023 affidavit in response to Mr. Delaronde's view set forth in his affidavit. Mr. Hill's February 6, 2023 affidavit seeks to respond to Mr. Delaronde's view by setting out an alternative vision of the Great Law which provides procedural justifications for the actions of HCCC in creating HDI and authorizing HDI to intervene in this litigation. This justification relies on what Mr. Hill suggests "could be called quorum"³⁰ as opposed to the collective, consensus based, decision-making process described by Mr. Delaronde in his affidavit. The concept of quorum allows for the HCCC, a body comprised of 50 Chiefs and 49 Clan Mothers, to make a decision with only a handful of chiefs present who may represent only "three of five nations."³¹

24. Mr. Hill also set forth in his February 6, 2023 affidavit, in opposition to the view put forth by Mr. Delaronde, that non-attendance by any Chief "is not a bar to decision-making" and that representation from each "bench" is all that matters in producing a binding resolution on all Nations and their Clans without direct representation of those Nations and Clans in the decision-making process.³²

25. Once again, the contrary evidence described in the paragraphs above put forth in Mr. Hill's February 6, 2023 affidavit was not, in accordance with the rule in *Browne v. Dunn*, put to Mr. Delaronde during his cross examination.

26. It is the position of the Men's Fire, as set forth in Mr. Delaronde's expert evidence, that the

²⁹ Exhibit 5 to the Cross-examination of Aaron Detlor held March 20, 2023.

³⁰ Hill Affidavit at para 57, Responding Motion Record pp. 58.

³¹ Hill Affidavit at para 57, Responding Motion Record pp. 58.

³² Hill Affidavit at para 58-59, Responding Motion Record pp. 58.

Great Law does not describe a decision-making process which involved quorum. Nor does the Great Law suggest that one Nation may bind another through a decision-making process in which that Nation is not itself involved and represented. Mr. Delaronde describes a collective decision-making process in accordance with the circle wampum³³³⁴, in which the ultimate determination of the Grand Council is simply a “confirmation of the voice of the people.” The Great Law prescribes a process of consultation when the Grand Council is dealing with matters of great importance to the Confederacy. This process is described by Delaronde and involves reaching unanimity among the clans and their representatives by allowing the Clan Mothers to consult with their respective clans.³⁵

27. In his affidavit, Mr. Delaronde defers to the English language written versions of the wampum as an introduction to Haudenosaunee Law, allowing him to elucidate the process in as clear and plain a fashion as possible for the benefit of the court. Mr. Delaronde states that these writings are just a basic outline of what our constitution is about, written in a way in which they can be used to introduce who the Huadenosaunee are in accordance with the Great Law.³⁶

28. Mr. Delaronde in his evidence describes the decision-making process of the Grand Council as follows:

- a. The Grand Council is made up of the circle wampum of 50 Chiefs, appointed by the Clan Mothers, representing the 49 clan families.
- b. Debates before the Grand Council are typically conducted in the following manner:
- c. The Chiefs of the Onondaga serve as the Council’s Firekeepers and are responsible for hearing the matters brought before the Council, sitting between the Elder (Mohawks and Seneca) and Younger (Oneida and Cayuga) Brothers.
- d. The Firekeepers shall then propose an issue for discussion. Each issue must be unanimously agreed upon by the Grand Council.
- e. Once an issue is agreed upon, the Elder Brothers shall introduce the issue

³³ Exhibit A to the Cross-examination of Paul Delaronde, held March 20, 2023.

³⁴ Delaronde Transcript at pp. 38-42, qq. 72.

³⁵ Delaronde Affidavit at para 21-22, Amended Responding Motion Record pp. 74.

³⁶ Delaronde Transcript at pp. 36, qq. 72.

to the council, and pass the issue on to the Younger Brothers.

f. The Chiefs of the Younger Brothers shall, after deliberating, either support the resolution or ask the Elder Brother Chiefs to reconsider their position with their recommendation in mind.

g. The Council shall continue to deliberate in this manner until they come to a unanimous decision through consensus building.

h. According to wampum 93, when the standing issue at the Grand Council is a “specially important matter” which “affects the entire body” of the Six Nations, the Chiefs are required to “submit the matter to the decision of their people.”

i. The process of consulting the people is described in wampums 94-95 of the Great Law and proceeds as follows:

Both the men and women of every clan shall have a council fire burning so that if “in their opinion it seems necessary for the interest of the people they shall hold a council and their decisions and recommendations shall be introduced” before the Chiefs.

k. The men and women of the council fires consult their communities and their Clan Mothers in this deliberation process, working to build consensus and come to one mind.

l. All the clan council fires of the Six Nations may unite into a general council fire, or delegates from the council fires may be appointed to unite in a general council for discussing the interests of the people.

m. When their general council fire comes to a conclusion on any matter, their decision shall be reported to the Chiefs of the Grand Council.³⁷³⁸

29. Mr. Delaronde was not cross examined on any of these wampums or their specific contents, nor in respect of his evidence on the decision-making process under Haudenosaunee Law of the Grand Council.

30. Decisions regarding matters of great importance such as land rights, as are being addressed in this proceeding, should not be made solely by the Chiefs at the Grand Council but through consultation with the Clan Mothers, and the people of their Clans.

31. This process functions in accordance with the philosophy and character of the Great Law which emphasizes consensus building and collective decision-making, unlike the process

³⁷ Delaronde Affidavit at para. 16-24, Amended Responding Motion Record pp. 73-74.

³⁸ Delaronde Affidavit at Exhibit “A”, pp. 84.

described by Mr. Hill at the April 2, 2022 meeting HDI through which the HCCC authorized their intervention in this proceeding by having a small group of Chiefs decide on the matter.³⁹

II. HDI was not Properly Authorized at the April 2, 2022 Meeting

32. Although the purported decision to advance a claim in the Superior Court of Justice in respect of land rights pertaining to the Haldimand Tract, which has been an ongoing issue since 1996, was made at a meeting at April 2, 2022, there was no advanced notice for this important issue prior to this meeting.

33. In cross examination of Mr. Doolittle, he admitted that, as a delegate of HDI, there was no notice provided with respect to HCCC meetings which deal with matters of critical importance to the community as a whole, such as the April 2, 2022 meeting at which the HCCC improperly authorized HDI to intervene in this proceeding.⁴⁰ Mr. Doolittle admitted that neither HDI or the HCCC provided an agenda to members of the Grand Council before the April 2, 2022 meeting informing Council and community members of what was being discussed and determined on that day.⁴¹

34. Mr. Doolittle took the position that if a Chief or Clan Mother is absent at a meeting, a decision could be made which is binding on them and their community without their involvement by as few as three individual Chiefs representing three of the five nations.⁴²

34. The Men's Fire submits that these positions are wholly inconsistent with the principles and philosophy espoused by the Peacemaker and enshrined in the Great Law. The decision-making process described in the great law involves consultation, collective decision-making, and

³⁹ Affidavit of Brian Doolittle., affirmed June 10, 2022 (“**Doolittle Affidavit**”) at para. 24-25, Motion Record pp. 29.

⁴⁰ Transcript of the Cross-examination of Brian Doolittle held on March 8, 2023 (“**Doolittle Transcript**”) at pp. 49, qq. 254.

⁴¹ Doolittle Transcript at pp. 49, qq. 252.

⁴² Hill Affidavit at para 58, Responding Motion Record pp. 58.

consensus building amongst all 49 clans which are united in the circle wampum.⁴³

35. The 49 clans which make up the Six Nations are as follows: :Elder Brothers: Mohawk (9 Chief Titles: 3 Turtle Clan, 3 Wolf Clan, 3 Bear Clan); Seneca (8 Chief Titles: 1 Wolf, 3 Snipe, 1 Bear, 1 Hawk, 2 Turtle) ; Younger Brothers: Oneida (9 Chief Titles: 3 Wolf Clan, 3 Turtle Clan, 3 Bear Clan); Cayuga (10 Chief Titles: 4 Bear Clan, 1 Heron Clan, 1 Snipe Clan, 2 Wolf Clan, 1 Turtle Clan, 1 Deer Clan); Tuscarora (2 Chief Titles: 1 Beaver Clan, 1 All Clans); Firekeepers: Onondaga (14 Chief Titles: 2 Turtle Clan, 3 Deer Clan, 4 Eel Clan, 4 Wolf Clan, 1 Beaver Clan).⁴⁴

36. In cross examination Mr. Doolittle, who observed the meeting⁴⁵, admitted the following with respect to the April 2, 2022 meeting in which HCCC authorized HDI to intervene in this proceeding:

- a. There were no Mohawk Chiefs present representing the Wolf Clan or Bear Clan;⁴⁶
- b. There were no Oneida Chiefs present representing the Wolf Clan or Bear Clan;⁴⁷
- c. There was no Cayuga Chief present representing the Heron Clan⁴⁸ or Wolf and Turtle Clan;⁴⁹
- d. There were no Onondaga Chiefs present representing the Eel Clan, Deer Clan, or Turtle Clan;⁵⁰
- e. There were no Seneca Chiefs present at the meeting;⁵¹

37. There was no evidence put forth by HDI that the decision-making process at the April 2,

⁴³ Delaronde Affidavit at para. 30, Amended Responding Motion Record pp. 76.

⁴⁴ Gerry Affidavit at Exhibit "C", pp. 156-166.

⁴⁵ Doolittle Affidavit at para 24, Motion Record pp. 29.

⁴⁶ Doolittle Transcript at pp. 123, qq. 583-584.

⁴⁷ Doolittle Transcript at pp. 124, qq. 589-590.

⁴⁸ Doolittle Transcript at pp. 125, qq. 599.

⁴⁹ Doolittle Affidavit at para. 25, pp. 29.

⁵⁰ Doolittle Transcript at pp. 126-127, qq. 607-609.

⁵¹ Doolittle Transcript at pp. 127, qq. 612.

2022 meeting involved the Clan Mothers, or involved the Clan Mothers consulting their clans and bringing back the voices of their communities to council. The important and distinct role of the Clan Mothers was minimized by Mr. Doolittle in his cross examination wherein he claimed that “there is no separation between a Chief and a Clan Mother.”⁵²

38. It is crucial to understand the actual and distinct roles of the Chiefs and Clan Mothers. Mr. Delaronde explains that in reality, there is “no such creature as a Chief...we have representatives, but the representatives in our language we say they are the ones who will raise our words. It is not them raising their words. It is to raise the words of the families whom they represent.”⁵³

39. The distinct role of the Clan Mother from that of the Chief, the representative, is explained by Mr. Hill in his cross examination in which he affirms that the Clan Mother has a responsibility to work together and consult with the Chief but also to oversee and watch what the Chief does so that she can provide advice to him as she deems necessary. Part of the role of the Clan Mother as overseer of the Chief is that she carries the responsibility to determine whether a Chief is acting properly or not and to remove him.⁵⁴

40. Mr. Delaronde explains that women, and especially the Clan Mothers, are the cornerstone of Haudenosaunee society. He explains that whenever there is an issue concerning the land, it must first come to the women because “The women and the land to us are one and the same. And the thing is, she cannot be bought. This is our mother... And we do not have the right to dissect her and claim different portions of her existence as ours.”⁵⁵ According to Mr. Delaronde, if you “destroy the women, you destroy the society.”⁵⁶ To claim that there is no important distinction in the role and significance of Chiefs and Clan Mothers in Haudenosaunee society, as Mr. Doolittle

⁵² Doolittle Transcript at pp. 64, qq. 302.

⁵³ Delaronde Transcript at pp. 30, qq. 56.

⁵⁴ Hill Transcript at pp. 38-39, qq. 121-123.

⁵⁵ Delaronde Transcript at pp. 18, qq. 37.

⁵⁶ Delaronde Transcript at pp. 60, qq. 96.

contends, is contrary to the framework of a matriarchal society.

41. The HCCC acted improperly and irregularly in authorizing HDI to intervene in this proceeding by making a decision which impacts and binds the Haudenosaunee people collectively without the consent or involvement of the Clan Mothers, and all Haudenosaunee communities, as represented by the 49 clans.⁵⁷

42. In his cross examination Mr. Doolittle admitted the following with respect to HDI's failure to seek out the consent and approval of various Haudenosaunee communities to act on their behalf in this proceeding:

a. HDI did not ask the Men's Fire of the Six Nations Grand River Territory for their consent to act on their behalf;⁵⁸

b. HDI did not request consent to act for the Mohawk Nation Council of Chiefs in this litigation;⁵⁹

c. Since the October 24th letter sent to HDI by the Oneida Nation Council of Chiefs HDI has not sought consent to represent the Oneida Nation Council of Chiefs;⁶⁰

d. HDI did not seek the consent of the Mohawks of the Bay of Quinte to act on their behalf before it took steps to become involved in this proceeding;⁶¹

e. HDI did not consult the Mohawk Council of Akwesasne before proceeding to intervene in this litigation;⁶²

43. The bodies representing the Haudenosaunee communities listed above reached out following broad notice of the HDI motion to intervene clarifying that they were not consulted and

⁵⁷ Delaronde Transcript at pp. 56-60, qq. 96.

⁵⁸ Doolittle Transcript at pp. 72-73, qq. 332.

⁵⁹ Doolittle Transcript at pp. 73-74, qq. 336.

⁶⁰ Doolittle Transcript at pp. 79, qq. 359-362.

⁶¹ Doolittle Transcript at pp. 81, qq. 369-371.

⁶² Doolittle Transcript at pp. 83, qq. 379.

asked by HDI to be represented by them in this proceeding in the form of objection letters.

44. The issue of the split council fires at Ohsweken and Onondaga also complicates the matter of HDI's authority over all Haudenosaunee citizens of the Confederacy across all Haudenosaunee territories in both Canada and the United States. Mr. Hill states in his affidavit affirmed June 10, 2022 and later expands in his cross examination⁶³ that the original Grand Council fire was "split" between Ohsweken and Onondaga. Mr. Delaronde also confirms in his cross examination the history of the split council fires.⁶⁴ In his affidavit, Mr. Hill states that "discussions between the two council fires continued for the benefit of all Haudenosaunee people."⁶⁵ HDI has produced no evidence that any discussions with respect to HDI's intervention in this proceeding have taken place between the council fires, including but not limited to requests for consent and agreement from the Onondaga Grand Council Fire.

III. HDI was not Properly Constituted

45. While there is serious doubt as to whether HDI was properly authorized according to Haudenosaunee Law, it is also questionable whether HDI was properly constituted according to Haudenosaunee Law.

46. HDI describes itself as something akin to a department or ministry of Haudenosaunee governance.⁶⁶ HDI claims that it is a traditional Haudenosaunee governing body despite being established in 2007 and there being no mention of a development institute in the Haudenosaunee histories, traditions, and Great Law.⁶⁷

47. HDI was established in 2007 following an uncertain number of meetings of the HCCC of which there are no records, notices, minutes, or agendas produced to confirm the nature and

⁶³ Hill Transcript at pp. 95, qq. 267.

⁶⁴ Delaronde Transcript at pp. 78-82, qq. 11

⁶⁵ Affidavit of Richard Wayne Hill Sr., affirmed June 10, 2022 at para. 30, Motion Record pp. 45.

⁶⁶ Doolittle Affidavit at para. 12, Motion Record pp. 24.

⁶⁷ Doolittle Transcript at pp. 14, qq. 56-60.

attendees of the meetings.⁶⁸

48. In 2014 a numbered company 2438543 Ontario Inc. (“**243 Ontario**”) was established by HDI through a Declaration of Trust⁶⁹ for the purpose of allowing HDI to function as intended, as an incorporated entity, to acquire and lease land among other things. Mr. Doolittle, who has been a Delegate of HDI continuously since its creation in 2007,⁷⁰ was involved in discussions and meetings in the leadup to the 2014 creation of 243 Ontario.⁷¹ Mr. Doolittle was also a senior officer of 243 Ontario.⁷² However, it is Mr. Doolittle’s evidence that he had not seen the Declaration of Trust document, signed by HDI director at the time Hazel Hill, until the day prior to his cross examination.⁷³ Hazel Hill, director of HDI at the time and the only signee to the Declaration of Trust, was arrested by Six Nations Police in September of 2020 facing charges of possession of fentanyl and unauthorized weapons.⁷⁴

49. The Declaration of Trust sets out 50 common shares in the capital of 243 Ontario which are held by the undersigned (Hazel Hill) in trust for the HCCC. Schedule “A” to the Declaration of Trust sets out who these 50 shares belong to.⁷⁵ According to the evidence provided by Mr. Doolittle all of the names listed in Schedule “A” are Chief “titles” and do not refer to individuals.⁷⁶ When asked whether he knew which Chief titles were vacant and which were filled at the time of the signing of the Declaration of Trust, Mr. Doolittle replied that he didn’t.⁷⁷ There is a serious question as to the validity of the Trust as there are no ascertainable beneficiaries.

50. 243 Ontario is a tightly controlled corporation under the authority of Aaron Detlor and

⁶⁸ Hill Transcript at pp. 66-67, qq. 203-205.

⁶⁹ Davey Affidavit at Exhibit “B”, Amended Responding Motion Record at pp. 29-31.

⁷⁰ Doolittle Transcript at pp. 27, qq. 134.

⁷¹ Doolittle Transcript at pp. 116, qq. 534.

⁷² Doolittle Transcript at pp. 116, qq. 532.

⁷³ Doolittle Transcript at pp. 112, qq. 511.

⁷⁴ Gerry Affidavit at Exhibit “G”, Supplemental Responding Motion Record pp. 186.

⁷⁵ Davey Affidavit at Exhibit “B”, Amended Responding Motion Record at pp. 29-31.

⁷⁶ Doolittle Transcript at pp. 114, qq. 521-524.

⁷⁷ Doolittle Transcript at pp. 114-115, qq. 525.

Brian Doolittle, the senior officers at the time of 243 Ontario's incorporation⁷⁸ and to date.

51. 243 Ontario handles payroll for HDI, among other primary functions which allow HDI to act as a corporate entity. In becoming a corporate entity by proxy of its use and reliance on 243 to carry out its operations, HDI has forfeited its place in the circle wampum and no longer has any jurisdiction under Haudenosaunee Law. This principle of Haudenosaunee Law is introduced in wampum 58 of the Great Law.⁷⁹ It is the evidence of Mr. Delaronde, and echoed by Mr. Davey, that by incorporating, or incorporating by proxy, under the laws of a foreign nation, HDI has alienated itself from the circle wampum, the spiritual and political bond of the Haudenosaunee, and relinquished its voice.⁸⁰

52. The Men's Fire submits that the process of HDI's creation, and subsequently 243 Ontario's creation, are marked by a lack of transparency, community engagement, and conformity to established Haudenosaunee laws and tradition.

C. HDI DOES NOT FAIRLY REPRESENT THE HAUDENOSAUNEE PEOPLE

53. The Men's Fire submits that HDI is not capable of fairly representing the citizens of the Haudenosaunee Confederacy they seek to represent in this proceeding. This is evidenced by HDI's lack of transparency and accountability to the Haudenosaunee people, and the actions they have taken which demonstrate that they are acting in conflict with the interests of the Haudenosaunee people for their own self interest.

54. HDI has demonstrated a lack of transparency and accountability with respect to the allocation of their funds. The Men's Fire has a direct interest in raising these issues in an ongoing class proceeding and which matters were raised in Mr. Davey's affidavit in this proceeding. In response to the issues raised, HDI produced selective and limited financial information, and upon

⁷⁸ Doolittle Transcript at pp. 116, qq. 532.

⁷⁹ Davey Affidavit at para. 34-35, Amended Responding Motion Record pp. 77.

⁸⁰ Delaronde Transcript at pp. 41, qq. 72.

which they refused to answer relevant questions.

55. Mr. Saul in cross examination admitted that the actual revenue earned by HDI from projects from 2013 to 2022 totals approximately \$38 million.⁸¹ Mr. Saul disclosed that in the current fiscal year HDI had over 215 projects and refused to produce the information for all projects to date generating revenue for HDI.⁸² Mr. Saul also stated that HDI's projected revenue for '23/'24 will be around \$11 million and that HDI projects to grow 60 percent this year and 10-20 percent annually in the years to come.⁸³

56. Following the evidence of teranet searches of 24, produced in Exhibit "E" of the affidavit of Liam Gerry,⁸⁴ HDI produced a document entitled "2438543 Ontario Inc. Real Property - Ownership at February 1, 2023", which was marked as Exhibit 11 to the cross examination of Mr. Saul. The evidence reveals that 243 Ontario has purchased and currently owns at least 9 properties.⁸⁵ These properties have been acquired using the revenue generated by HDI which is designated for the purported benefit of the Haudenosaunee people.⁸⁶

57. Mr. Saul admitted in his cross examination the approximate cost of these land acquisitions by HDI under 243 Ontario:

- a. 386 Oneida Road was purchased for "in excess of a million."⁸⁷
- b. 518 Argyle Street was purchased for "in excess of a million."⁸⁸
- c. 51 6th line was purchased for around \$700,000.⁸⁹
- d. 392 Oneida Road was purchased for "around a million."⁹⁰

⁸¹ Transcript of the Cross-examination of Richard Saul, dated March 7, 2023 ("**Saul Transcript**"), at pp. 140, qq. 615.

⁸² Saul Transcript at pp. 143-144, qq. 624-627.

⁸³ Saul Transcript at pp. 140-141, qq. 617-620.

⁸⁴ Gerry Affidavit at Exhibit "E", Supplemental Responding Motion Record pp. 176-177

⁸⁵ Exhibit 11 to the Saul Transcript.

⁸⁶ Doolittle Affidavit at Exhibit "F", Motion Record pp. 125-126.

⁸⁷ Saul Transcript at pp. 128, qq. 560.

⁸⁸ Saul Transcript at pp. 128, qq. 561.

⁸⁹ Saul Transcript at pp. 128, qq. 566.

⁹⁰ Saul Transcript at pp. 129, qq. 567.

e. The residential condominium at 38 Howard Park Avenue was purchased for over \$1.3 million.⁹¹

58. Note 1 under “significant accounting policies” in the 2017 financial statement of HDI states that there is a method for restricting fund accounting. The statement reads that the “land acquisition fund consists of net assets to be used for the sole benefit of the Haudenosaunee people...such funds shall only be used by the HCCC for the purposes of acquisition of land to support the advancement and promotion of Haudenosaunee educational programs and initiatives...Expenditures must be for the acquisition of land and for the benefit of Haudenosaunee, as deemed fit by the Royane [Chiefs] and Yakoyane [Clan Mothers] on a case by case basis.”⁹² Mr. Saul in his cross examination states that the acquisition of the 9 properties by 243 comes within this method of fund accounting for treating land acquisition.⁹³ Mr. Saul stated that based on this statement, the nine properties acquired by 243 Ontario were not acquired for the promotion of Haudenosaunee educational programs, human health, welfare, and promotion of initiatives; nor were they acquired for the purposes of Haudenosaunee ceremonies, language, cultural heritage, education, and environmental conservation.⁹⁴

59. Mr. Saul also admitted that any acquisition of property had to first be deemed fit by Chiefs and Clan Mothers on a case-by-case basis as laid out in the 2017 financial statement’s accounting policies.⁹⁵

60. The Land Rights Statement, adopted by HCCC in council November 4, 2006, states that the “land is meant to be shared among and by the people... it is not for personal empire building.” Moreover, it states that “according to our law, the land is not private property that can be owned by any individual. In our worldview the land is a collective right. It is held in common for the

⁹¹ Saul Transcript at pp. 127-128, qq. 558.

⁹² Affidavit of Councilor Miller, affirmed November 1, 2022, at Exhibit “L”, pp. 1221 of the Responding Motion Record of the Plaintiff

⁹³ Saul Transcript at pp. 134-135, qq. 591-593.

⁹⁴ Saul Transcript at pp. 137-138, qq. 603-606.

⁹⁵ Saul Transcript at pp. 139, qq. 610.

benefit of all. The land is actually a sacred trust, placed in our care, for the sake of coming generations.”⁹⁶

61. Mr. Doolittle in his evidence affirmed that the Land Rights Statement contained in his affidavit and quoted above is one of the Council’s own policy statements and that it is accurate as of today.⁹⁷ Mr. Doolittle admitted that none of the properties acquired by 243 since 2015 have been used for community housing, one of HDI’s stated goals for its land acquisitions.⁹⁸

62. The Men’s Fire submits that, contrary to their own plainly stated policies provided in their evidence, HDI’s multimillion dollar land acquisitions clearly fail to meet the threshold for primarily functioning to benefit the Haudenosaunee people. The most egregious example of this is the \$1.3 million dollar acquisition of a residential condominium in Toronto on Howard Park Avenue. The condo is labeled as “HDI East/Toronto office and accommodations for monitors” on the 243 Real Property Ownership List. However, Mr. Doolittle admitted that he did not read the condominium documents to see if this residential condominium association would allow an office to be created in the building nor did he discuss this matter with Mr. Detlor.⁹⁹ Mr. Saul admitted that HDI did not look for office space to lease rather than purchase around the time that the property at 44 6th Line was purchased.¹⁰⁰

63. In the cross examination of Mr. Detlor, he was made to disclose, which he had previously failed to do on his own accord, that he personally co-owns the Howard Park condominium with 243 Ontario holding a 50 percent interest.¹⁰¹ The purchase of the residential condo by 243 Ontario and Mr. Detlor is a clear violation of HDI’s stated land acquisition policies and a transparently self-interested action. The condo unit is evidently not an office space but a luxurious residential

⁹⁶ Doolittle Affidavit at Exhibit “F”, Motion Record pp. 118.

⁹⁷ Doolittle Transcript at pp. 135-136, qq. 659-661.

⁹⁸ Doolittle Transcript at pp. 139-140, qq. 680-687.

⁹⁹ Doolittle Transcript at pp. 133-134, qq. 648-649.

¹⁰⁰ Saul Transcript at pp. 129, qq. 571.

¹⁰¹ Transcript of the Cross-examination of Aaron Detlor (“**Detlor Transcript**”) held on March 24, 2023 at pp. 173, qq. 634-636.

suite for private use.

64. Mr. Saul affirmed in his evidence that Mr. Detlor received \$130,000 for success fees in 2021, and \$208,000 in success fees in 2022. Mr. Saul also affirmed that he received success fees in other years but was not able to specify the amount or the total.¹⁰² Further questions regarding success fees, and high paying salaries for employees at 243 Ontario and HDI were refused.¹⁰³

65. The Men's Fire submits that HDI's reluctance to disclose any details of the 215 projects (including fees earned), details about payments and fees, as well as their record of land acquisitions which have not served to enhance the welfare of the Haudenosaunee people, demonstrate a crucial lack of transparency and accountability to the community. This lack of transparency and accountability, alongside the clear discontinuity between the broader interests of the community and the self-interested actions of HDI, indicate that HDI will not be able to fairly represent the citizens of the Haudenosaunee Confederacy

¹⁰² Saul Transcript, at pp. 112, qq. 490-491.

¹⁰³ Saul Transcript, at 112-113. 491-497.

PART III – ISSUES AND LAW

A. ISSUES TO BE DETERMINED

66. The issues before this Court on the Men’s Fire motion are as follows:

a. Should the Men’s Fire be granted leave as a friend of the court or as an added party in respect of the HDI motion for leave?

b. Should HDI be granted leave to be added as a party?

c. Does HDI have the authority to be appointed as a representative of all citizens of the Haudenosaunee Confederacy?

d. Does HDI fairly represent all of the citizens of the Haudenosaunee Confederacy?

B. THE THRESHOLD FOR INTERVENTION

67. In accordance with Rule 13 of *The Rules of Civil Procedure*, R.S.O. 1990, Reg 194, as amended, there are two different types of intervention: as a party (under R 13.01) and as a friend of the court (under R 13.02).

68. Rule 13.01 of *The Rules of Civil Procedure* provides, in part, as follows:

13.01 (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

(a) an interest in the subject matter of the proceeding

The Rules of Civil Procedure, R.R.O. 1990, O.Reg. 194, Rule 13.01

69. Rule 13.02 of *The Rules of Civil Procedure* provides as follows:

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or associate judge, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.

The Rules of Civil Procedure, R.R.O. 1990, O.Reg. 194, Rule 13.02

70. On a motion to intervene as an added party or friend of the court, the court must consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding.

71. It is respectfully submitted that the Men's Fire has sufficient interest in the subject matter of the HDI motion for intervention to be added as a party on the motion, under rule 13.01(1)(a). In addition the Men's Fire should be granted leave or invited by the presiding judge to intervene as a friend of the court as it has sufficient evidence and position to render assistance to the court in the determination of the HDI motion, pursuant to rule 13.02.

72. The test whether the intervener, as an added party, has an "interest in the subject matter" under R 13.01(a) was dealt with in *Halpern v. Toronto (City) Clerk (2000)*. The court held that a party has a "clear interest" where it demonstrates that the party's interest in the proceedings is "over and above that of the general public" and where that interest is "genuine and direct".

Halpern v. Toronto (City) Clerk (2000), 2000 CanLII 29029, 51 O.R. (3d) 742 (S.C.)

73. It is respectfully submitted that the Men's Fire has raised issues of concern about HDI's authority, lack of transparency, and accountability which are germane to the issues on the HDI motion.

74. In deciding whether to grant leave to an intervener to be added as a party or be invited as a friend of the court, the Court may consider the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.

Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd., (1990), 74 O.R. (2d) 164 at 167 (C.A.) ("Peel v. Great Atlantic").

Foster v. West, 2021 ONCA 263 (CanLII) 55 R.F.L. (8th) 270, at para. 10

Reference re Greenhouse Gas Pollution Pricing Act, 2019 ONCA 29 (CanLII) at para. 8

75. In *Hydro One Networks Inc. v. Ontario Energy Board, 2019 ONSC 3763* (Div. Ct.), Thorburn J. re-framed the factors of “the likelihood of the applicant being able to make a useful contribution” from *Peel v. Great Atlantic*, and the proposed intervenor having “an important perspective distinct from the immediate parties” from *AG Ontario v. Dieleman*, as follows (at para. 25): “[T]he likelihood that the proposed intervenor can make a useful and distinct contribution to the resolution of the appeal [in this case the application] not otherwise afforded by the parties.”

On the issue of “what constitutes a useful and distinct contribution”, Thorburn J. restated the issue, as follows:

26 A contribution is not useful if it simply repeats issues and arguments put forward by the parties although some overlap may be permitted: See *Halpern v. Toronto (City) Clerk* (2000), 2000 CanLII 29029 (ON SCDC), 51 O.R. (3d) 742 at para. 18 (Div. Ct.).

27 There must be a real, substantial and identifiable interest in the subject matter, and an important and a distinct perspective to be articulated that is different from that of the parties.... Intervention is especially helpful where the interest [sic] of the more vulnerable are at stake and the outcome will be beyond the private rights of parties: See *Reference re Workers’ Compensation Act 1983* (Nfld), [1989] 2 SCR 335, 1989 CanLII 23 (SCC) at paras. 11-12.

28 The courts have recognized the desirability of having “all of the relevant possibilities brought to its attention, including submissions on the impact of its judgment, not only on the parties but on those not before the court” This is true even where only certain aspects of the ultimate decision may bear on the rights at issue and where the intervenor may bring only a slightly different perspective to be considered: See *Childs v. Desormeaux*, [2003] OJ no 3800 (QL), 2003 CanLII 47870 (OCA) at para 15.

Hydro One Networks Inc. v. Ontario Energy Board, 2019 ONSC 3763 (Div. Ct.),

Real, Substantial and Identifiable Interest in the Subject Matter of the Proceedings

76. Where the proposed intervenor has a history of involvement in an issue, and where the judgment of the court on an issue relevant to the proposed intervention will have a direct impact

on the work of those represented by the proposed interveners, the proposed intervener will be more affected by a Court's judgment than the parties and should be granted intervener status.

Hill v. Church of Scientology of Toronto et. al., (1993), 69 O.A.C. 67 and 69 O.A.C. 69 (C.A.)(69) (O.A.C. at 69, para 9, O.A.C. at 70, paragraph 12 (C.A.(in Chambers) ("Hill"))

77. In addition, where the proposed intervenor has a real interest in the state of the law and not the particular result of a matter insofar as it affects the parties, this is sufficient for the moving party to be granted intervenor status.

Hill, 69 O.A.C. at 70, paragraph 12

78. It is respectfully submitted that the Men's Fire has demonstrated that they have a useful contribution and a real, substantial identifiable interest in the issues raised on the motion. The Men's Fire has a history of involvement on the issues raised by them on this motion and such issues are relevant to the proposed intervention of HDI. The Men's Fire as well has a real interest in the fundamental issue of whether HDI is a proper representative under Haudenosaunee Law.

The Intervenor has an Important Perspective Distinct from the Immediate Parties

79. An applicant who has a history of involvement in an issue giving the applicant an expertise which can shed fresh light or provide new information on the matter is sufficient to establish that the intervenor has an important perspective distinct from the immediate parties

80. It is respectfully submitted that Paul Delaronde, a qualified expert on Haudenosaunee Law, provides the court with insight on how Haudenosaunee law should be interpreted in the context of the HDI motion.

[Reference Re Workers Compensation Act, 1983, \[1989\] 2 S.C.R. 335, QL at 4.](#)

Hill, 69 O.A.C. at 69, para 9.

Granting Intervener Status Will Not Prejudice the Immediate Parties

81. Granting intervener status will not unduly delay or otherwise prejudice the immediate parties, as the Men’s Fire motion to intervene will be heard at the same time as the HDI motion to intervene.

B. THE ROLE OF FRIEND OF THE COURT

82. In *Kapoor v Kuzmanovski*, Daly RSJ, summarized the role of an intervener as a friend of the court, as follows:

[17] As to the third consideration of whether the proposed friend of the court will render assistance to the court by way of argument which would make a useful contribution to the determination of the issues on the plaintiff’s motion, McMurtry C.J.O. (in chambers) in *Childs v. Desormeaux*, 2003 CanLII 47870 (ON CA) in a motion by Mothers Against Drunk Driving Canada to be added as a friend of the court, in a pending appeal, noted as follows at para [13] – [15]:

[13] Today most intervenors who intervene as a friend of the court articulate a position that may generally be aligned with one or another side of the argument. The submission of the respondents that a “friend of the court” must be neutral, abstract and objective refers to a restricted notion of the *amicus curiae* that has long been rejected. In the United States, the author Samuel Krislov, in “The Amicus Brief: From Friendship to Advocacy” (1963) 72 Yale L.J. 694 at p. 704, stated:

The Supreme Court of the United States makes no pretense of such disinterestedness on the part of “its friends”. The *amicus* is treated as a potential litigant in future case, as an ally of one of the parties, or as the representative of an interest not otherwise represented ... thus the institution of the *amicus curiae* brief has moved from neutrality to partisanship, from friendship to advocacy.

[14] While the law of Ontario has not, perhaps, expanded the role of the friend of the court this far, David Scriven and Paul Muldoon, wrote as long ago as 1985, in their article “Intervention as a Friend of the Court: Rule 13 of the Ontario Rules of Civil Procedure” (1986) 6 Advocates’ Q. 448, at pp. 456-57:

While the old case law implicitly assumes that a friend of the court cannot provide “assistance” when it intends to advocate its point of view, the language of Rule 13.02 appears to deny this traditional argument. The rule states that any person may intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument. The term “argument” literally means to “persuade by giving reasons” and thus directly imports the notion of advocacy in such applications.

[15] Since the publication of this article the law of this province has developed to recognize the valid and important contribution that can be made in appropriate cases by friends of the court who may be advocates for a particular interpretation of the law.

[Kapoor v Kuzmanovski, 2017 ONSC 1709 \(CanLII\)](#)

83. In [Oakwell Engineering Limited v. Enernorth Industries Inc., 2006 CanLII 60327 \(ON CA\)](#),

McMurtry C.J.O. defined the role of “friend of the court” as follows:

[9] A friend of the court need not be “impartial”, “objective” or “disinterested” in the outcome of the case and this court has recognized the valid contributions to be made in appropriate cases by classes of interveners who may advocate a particular interpretation of the law. Such contributions may assist the court in its analysis of the issues for determination by placing them under scrutiny through a different lens or from a different perspective. The fact that the position of a proposed intervenor is generally aligned with the position of one of the parties is not a bar to intervention if the intervenor can make a useful contribution to the analysis of the issues before the court. See *Childs v. Desormeaux* (2003), 2003 CanLII 47870 (ON CA), 67 O.R. (3d) 385 (C.A.); *Halpern v. Toronto (City) Clerk* (2000), 2000 CanLII 29029 (ON SCDC), 51 O.R.(3d) 742.

84. It is respectfully submitted that the Men’s Fire should be invited as a friend of the court as the Men’s Fire meets the test for the role of a “friend of the court” as set out in the above decisions.

C. HAUDENOSAUNEE LAW EXPERT EVIDENCE

85. Is respectfully submitted that the Great Law of Peace is to be treated by this court as foreign law. Foreign law is treated as a question of fact as determined by the evidence. Where the foreign law experts may differ in the interpretation of foreign law, the court is at liberty to” apply its own

mind to the differing views by the assessment of the witnesses and the weight to be given to such evidence.

General Motors Acceptance Corporation of Canada, Limited v. Town and Country Chrysler Limited, 2007 ONCA 904 (CanLII), paras 34,38.

86. The Men's Fire expert Paul Delaronde is steeped in the traditions, ways, and struggles of the Haudenosaunee people. Mr. Delaronde has received the wisdom and the oral tradition from his elders passed down for generations amongst the Haudenosaunee. He has participated in keeping the ways and traditions of his elders alive through recitations in which the wampums of the Great Law of Peace are expounded upon. He has been recognized as an expert in both Canadian and U.S. courts.

87. Paul Delaronde was qualified as an expert in *R. v. Green*, where Justice ruled:

[19] I take the view that with regard to anything I have to understand, that while this gentleman is opinionated, he is not an advocate, he has not expressed an advocacy for specific issue in this trial. He may advocate for specific issues that are extremely important to the First Nations people of this area, but that is different from the issues that I have to decide in this specific trial.

[20] He is here to provide his expertise on the historical ways and traditions, and as I have said, I note he does not like that term 'of his people'. I feel this information will be of assistance to the court, and I am satisfied that the witness has met the criteria set out in our case law, which would allow him to give expert evidence on these issues of the governance and the historical traditional governance of the Six Nations people in this area.

[21] I feel that I can weigh all of the evidence, be it proffering of opinions or otherwise, in arriving at my determination in this matter. So, I will allow him to give expert evidence.

R. v. Green, 2017 ONCJ 705 (CanLII)

88. It is respectfully submitted that Mr. Delaronde has provided expert evidence on Haudenosaunee Law as it pertains to governance and authority issues in making decisions by the Grand Council on land claims, such as in issues in this proceeding. This evidence should be

contrasted with the expert put forth by HDI, Mr. Hill, who is an admitted historian and had a relationship with HDI and HCCC, which does not make him independent.

89. In the cross examination of Mr. Delaronde, counsel for HDI infringed the rule of fair advocacy known as the rule in [Browne v. Dunn](#). The rule in *Browne v. Dunn* states that where counsel intends to impeach the credibility of a witness by means of other evidence, he or she must give that witness the other evidence to him. In the application of the rule in [O'Brien v. Shantz \[1998\] O.J. No. 4072, C.A.](#) the judge found that the defence could not rely on a report, used to contradict the testimony of the plaintiff, where the defence had not put the report directly to the plaintiff.

[J B Printing Ltd. v. 829085 Ontario Ltd., 2003 CanLII 19834 \(ON SC\)](#), at para 23.

90. It is respectfully submitted that HDI counsel in cross examination did not put to Mr. Delaronde any questions in respect of Mr. Delaronde's opinion on the authority and governance issues, and the denigrating attacks on the Men's Fire's integrity and credibility. In accordance with the rule in *Browne v. Dunn*, counsel for HDI should not be permitted to impeach Mr. Delaronde's testimony on those issues.

D. HDI REPRESENTATION ISSUE

91. HDI is essentially seeking in their intervention motion standing to represent the Haudenosaunee people, which is akin to a representation order. Justice Nordheimer (as he then was) laid out the following test for a proposed "representative":

[14] In my view, the approach that should be taken to determine whether a representative order should be granted is essentially the same approach, with necessary modifications,

that is taken in determining whether a class should be certified under the Class Proceedings Act, 1992, S.O. 1992, c. 6. In particular, the court should be satisfied that (i) there is a proper cause of action; (ii) the claims to be advanced raise common issues; (iii) a representative action is the preferable procedure for the determination of the common issues and (iv) the proposed representative would fairly represent the interests of the members of the unincorporated association or trade union and does not have any interest that is in conflict with those interests. This approach is consistent with the fact that the rule is expressly directed toward cases which would otherwise be dealt with under the Class Proceedings Act, 1992 but for the expense and inconvenience of proceeding in that fashion.

[Ginter v. Gardon, 2001 CanLII 28052 \(ON SC\)](#), at para 14.

92. It is respectfully submitted that HDI does not meet the fourth branch of the test in that HDI does not fairly represent the interests of the Haudenosaunee people. In light of the issues raised in respect to HDI's and its related company 243 Ontario's transparency and accountability issues, HDI does not fairly represent the interests of all the citizens of the Haudenosaunee Confederacy.

PART V – ORDERED REQUESTED

93. The Men's Fire requests that the motion be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of March, 2023.

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Territory

Schedule “A”

LIST OF AUTHORITIES

1. [Halpern v. Toronto \(City\) Clerk, 2000 CanLII 29029 \(ON SCDC\)](#)
2. [Peel \(Regional Municipality\) v. Great Atlantic & Pacific Co. of Canada Ltd. \(C.A.\), 1990 CanLII 6886 \(ON CA\)](#)
3. [Foster v. West, 2021 ONCA 263 \(CanLII\) 55 R.F.L. \(8th\) 270, at para. 10](#)
4. [Hydro One Networks Inc. v. Ontario Energy Board, 2019 ONSC 3763 \(CanLII\)](#)
5. [Hill v. Toronto Church of Scientology, 1993 CanLII 280 \(ON CA\)](#)
6. [Reference Re Workers Compensation Act, 1983, \[1989\] 2 S.C.R. 335, QL at 4.](#)
7. [Kapoor v Kuzmanovski, 2017 ONSC 1709 \(CanLII\)](#)
8. [Oakwell Engineering Limited v. Enernorth Industries Inc., 2006 CanLII 60327 \(ON CA\)](#)
9. [General Motors Acceptance Corporation of Canada, Limited v. Town and Country Chrysler Limited, 2007 ONCA 904 \(CanLII\)](#)
10. [R. v. Green, 2017 ONCJ 705 \(CanLII\)](#)
11. [Browne v. Dunn, 1893 CanLII 65 \(FOREP\)](#)
12. [O'Brien v. Shantz, 1998 CanLII 6260 \(ON CA\)](#)
13. [J B Printing Ltd. v. 829085 Ontario Ltd., 2003 CanLII 19834 \(ON SC\)](#)
14. [Ginter v. Gardon, 2001 CanLII 28052 \(ON SC\)](#)

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS
Plaintiff

-and-

THE ATTORNEY GENERAL OF CANADA *et al.*
Defendants

Court File No. CV-18-594281-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE MOVING PARTY (MEN'S FIRE)

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